

AMENDED IN SENATE APRIL 10, 2013

SENATE BILL

No. 124

Introduced by Senator Corbett

January 18, 2013

An act to amend Sections 4217.11 and 4217.16 of the Government Code, and to add Section 10780.6 to, and to add Article 7 (commencing with Section 10390) to Chapter 2 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 124, as amended, Corbett. Public contracts: bid preferences: clean energy.

Existing law imposes various requirements with respect to contracting by state agencies and the Trustees of the California State University. Existing law requires state agencies and to the Trustees of the California State University to use a competitive bidding process when contracting for goods and services. However, existing law allows a public agency to award an energy service contract if the governing body determines it is in the best interest of the agency and costs will be reduced, as specified.

This bill would require state agencies and the Trustees of the California State University that accept bids or proposals for a contract for the purchase or installation of a clean energy device, technology, or system, as defined, to provide a 5% preference to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured or assembled in the state, in accordance with specified criteria. This bill would authorize a public agency, including, but not limited to, the Trustees of the California State University, to award a contract based on the fact that a clean energy

device, technology, or system was manufactured or assembled in the state if the contract is an energy service contract determined to be in the best interest of the public agency.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California faces the most severe economic downturn since
4 the Great Depression. Over two million Californians are out of
5 work, and California's unemployment rate is one of the highest in
6 the nation.

7 (b) At a time of scarce state resources, state purchases should
8 be used to stimulate our state economy and put people back to
9 work.

10 (c) The Green Building Executive Order ~~(S-20-04)~~ (B-18-12)
11 mandated that state agencies evaluate the merits of using clean
12 and renewable onsite energy generation technologies in all new
13 building or large renovation projects.

14 (d) California has several companies that manufacture clean
15 energy devices, technology, and systems in the state, employing
16 Californians and helping our economy.

17 (e) California is the nation's largest clean economy. More than
18 12,000 clean technology companies call California home and are
19 creating jobs at nearly 10 times the rate of the state's other
20 industries. A number of these companies have developed novel
21 technologies, and it is in the interest of the state to incentivize these
22 companies to establish and grow manufacturing operations within
23 the state. This will create both construction and permanent
24 manufacturing jobs in California.

25 (f) It is the intent of the Legislature that a preference should be
26 allowed for clean energy devices, technology, and systems
27 manufactured in California.

28 SEC. 2. Section 4217.11 of the Government Code is amended
29 to read:

30 4217.11. The following terms, whenever used in this chapter,
31 have the meanings given in this section, except where the context
32 clearly indicates otherwise:

1 ~~(a) “Alternate energy equipment” means equipment for the~~
2 ~~production or conversion of energy from alternate sources as its~~
3 ~~primary fuel source, such as solar, biomass, wind, geothermal,~~
4 ~~hydroelectricity under 30 megawatts, remote natural gas of less~~
5 ~~than one billion cubic feet estimated reserves per mile from an~~
6 ~~existing gas gathering line, natural gas containing 850 or fewer~~
7 ~~British Thermal Units per standard cubic foot, or any other source~~
8 ~~of energy, the efficient use of which will reduce the use of fossil~~
9 ~~or nuclear fuels.~~

10 ~~(b) (1) “Clean energy device, technology, or system” means~~
11 ~~the following:~~

12 ~~(A) A device, technology, or system that contributes to improved~~
13 ~~energy management or efficiency.~~

14 ~~(B) Ultralow-emission equipment for energy generation based~~
15 ~~on thermal energy systems, including, but not limited to, natural~~
16 ~~gas turbines and fuel cells.~~

17 ~~(C) A device, technology, or system that conserves or produces~~
18 ~~heat, processes heat, space heating, water heating, steam, space~~
19 ~~cooling, refrigeration, mechanical energy, electricity, or in any~~
20 ~~form convertible to these uses, that does not expend or use~~
21 ~~conventional energy fuels, and that uses any of the following~~
22 ~~electrical generation technologies:~~

23 ~~(i) Biomass.~~

24 ~~(ii) Solar thermal.~~

25 ~~(iii) Photovoltaic.~~

26 ~~(iv) Wind.~~

27 ~~(v) Geothermal.~~

28 ~~(2) For the purposes of this subdivision, “conventional energy~~
29 ~~fuel” means any fuel derived from petroleum deposits, including,~~
30 ~~but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas,~~
31 ~~including liquefied natural gas or nuclear fissionable materials.~~

32 ~~(c) “Cogeneration equipment” means equipment for~~
33 ~~cogeneration, as defined in Section 216.6 of the Public Utilities~~
34 ~~Code.~~

35 ~~(d) “Conservation measures” means equipment, maintenance,~~
36 ~~load management techniques and equipment, or other measures~~
37 ~~to reduce energy use or make for a more efficient use of energy.~~

38 ~~(a) “Clean energy device, technology, or system” means devices~~
39 ~~or technologies used for a renewable electrical generation facility,~~
40 ~~as defined in paragraph (1) of subdivision (a) of Section 25741 of~~

1 *the Public Resources Code; a combined heat and power system,*
2 *as defined in Section 2840.2 of the Public Utilities Code;*
3 *distributed generation and energy storage technologies eligible*
4 *under the self-generation incentive program pursuant to Section*
5 *379.6 of the Public Utilities Code, as determined by the Public*
6 *Utilities Commission; or a facility designed for the production of*
7 *renewable fuels the efficient use of which reduces the use of fossil*
8 *or nuclear fuels; and energy efficiency devices or technologies*
9 *that reduce the need for new electric generation and reduce*
10 *emissions of toxic and criteria pollutants and greenhouse gases.*

11 (e)

12 (b) “Conservation services” means the electrical, thermal, or
13 other energy savings resulting from conservation measures, which
14 shall be treated as a supply of ~~such~~ that energy.

15 (f)

16 (c) “Energy conservation facility” means ~~alternate energy~~
17 ~~equipment, cogeneration equipment,~~ *clean energy devices,*
18 *technologies, or systems,* or conservation measures located in
19 public buildings or on land owned by public agencies.

20 (g)

21 (d) “Energy service contract” means a contract entered into by
22 a public agency with any person, pursuant to which the person will
23 provide electrical or thermal energy or conservation services to a
24 public agency from an energy conservation facility.

25 (h)

26 (e) “Facility financing contract” means a contract entered into
27 by a public agency with any person whereby the person provides
28 financing for an energy conservation facility in exchange for
29 repayment of the financing and all costs and expenses related
30 thereto by the public agency. A facility financing contract may
31 provide for the person with whom the public agency contracts to
32 provide any combination of feasibility studies for, and design and
33 construction of, all or part of the energy conservation facility in
34 addition to the financing and other related services, and may
35 provide for an installment sale purchase, another form of purchase,
36 or amortized lease of the energy conservation facility by the public
37 agency.

38 (i)

39 (f) “Facility ground lease” means a lease of all, or any portion
40 of, land or a public building owned by, or under lease to, a public

agency to a person in conjunction with an energy service contract or a facility financing contract. A facility ground lease may include, in addition to the land on which energy conservation facilities will be located, easements, rights-of-way, licenses, and rights of access, for the construction, use, or ownership by the person of the facility and all related utility lines not owned or controlled by the interconnecting utility, and offsite improvements related thereto. A facility ground lease may also include the addition or improvement of utility lines and equipment owned by the interconnecting utility—~~which~~ *that* are necessary to permit interconnection between that utility and an energy conservation facility.

(j)

(g) “Person” means, but is not limited to, any individual, company, corporation, partnership, limited liability company, public agency, association, proprietorship, trust, joint venture, or other entity or group of entities.

(k)

(h) “Public agency” means the state, a county, city and county, city, district, community college district, school district, California State University, joint powers authority or other entity designated or created by a political subdivision relating to energy development projects, and any other political subdivision or public corporation in the state.

(l)

(i) “Public building” includes any structure, building, facility, or work which a public agency is authorized to construct or use, and automobile parking lots, landscaping, and other facilities, including furnishings and equipment, incidental to the use of any structure, building, facility, or work, and also includes the site thereof, and any easements, rights-of-way appurtenant thereto, or necessary for its full use.

SEC. 3. Section 4217.16 of the Government Code is amended to read:

4217.16. Prior to awarding or entering into an agreement or lease, the public agency may request proposals from qualified persons. After evaluating the proposals, the public agency may award the contract on the basis of the experience of the contractor, the type of technology employed by the contractor, the cost to the local agency, whether the clean energy device or technology is

1 manufactured or assembled in California, and any other relevant
2 considerations. The public agency may utilize the pool of qualified
3 energy service companies established pursuant to Section 388 of
4 the Public Utilities Code and the procedures contained in that
5 section in awarding the contract.

6 SEC. 4. Article 7 (commencing with Section 10390) is added
7 to Chapter 2 of Part 2 of Division 2 of the Public Contract Code,
8 to read:

9
10 Article 7. Preference for California-Manufactured Clean Energy
11 Devices, Technology, and Systems
12

13 10390. For the purposes of this article:

14 (a) ~~(1)~~—“Clean energy device, technology, or system” means
15 ~~the following: devices or technologies used for a renewable~~
16 *electrical generation facility, as defined in paragraph (1) of*
17 *subdivision (a) of Section 25741 of the Public Resources Code; a*
18 *combined heat and power system, as defined in Section 2840.2 of*
19 *the Public Utilities Code; distributed generation and energy*
20 *storage technologies eligible under the self-generation incentive*
21 *program pursuant to Section 379.6 of the Public Utilities Code,*
22 *as determined by the Public Utilities Commission; or a facility*
23 *designed for the production of renewable fuels, the efficient use*
24 *of which reduces the use of fossil or nuclear fuels; and energy*
25 *efficiency devices or technologies that reduce the need for new*
26 *electric generation and reduce emissions of toxic and criteria*
27 *pollutants and greenhouse gases.*

28 ~~(A) A device, technology, or system that contributes to improved~~
29 ~~energy management or efficiency.~~

30 ~~(B) Ultralow-emission equipment for energy generation based~~
31 ~~on thermal energy systems, including, but not limited to, natural~~
32 ~~gas turbines and fuel cells.~~

33 ~~(C) A device, technology, or system that conserves or produces~~
34 ~~heat, processes heat, space heating, water heating, steam, space~~
35 ~~cooling, refrigeration, mechanical energy, electricity, or in any~~
36 ~~form convertible to these uses, that does not expend or use~~
37 ~~conventional energy fuels, and that uses any of the following~~
38 ~~electrical generation technologies:~~

39 ~~(i) Biomass.~~

40 ~~(ii) Solar thermal.~~

1 ~~(iii) Photovoltaic.~~

2 ~~(iv) Wind.~~

3 ~~(v) Geothermal.~~

4 ~~(2) For the purposes of this subdivision, “conventional energy~~
5 ~~fuel” means any fuel derived from petroleum deposits, including,~~
6 ~~but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas,~~
7 ~~including liquefied natural gas or nuclear fissionable materials.~~

8 (b) “Power purchase agreement” means a financial arrangement
9 in which a third-party developer owns, operates, and maintains a
10 clean energy device, technology, or system, and a state agency
11 agrees to site the device, technology, or system on its roof or
12 elsewhere on its property and purchases the device, technology,
13 or system’s electric output, not the device, technology, or system
14 itself, from the third-party developer for a predetermined period
15 of time.

16 10391. (a) A state agency that accepts bids or proposals for a
17 contract for the purchase or installation of a clean energy device,
18 technology, or system through a power purchase agreement or a
19 direct purchase shall provide a preference of 5 percent to a bidder
20 that certifies that all of the parts of the clean energy device,
21 technology, or system to be installed have been manufactured or
22 assembled in this state. The preference shall be provided as follows:

23 (1) For solicitations to be awarded to the lowest responsible
24 bidder meeting specifications, the preference to a bidder that
25 certifies that all of the parts of the clean energy device, technology,
26 or system to be installed have been manufactured or assembled in
27 this state shall be 5 percent of the bid price of the lowest
28 responsible bidder meeting specifications.

29 (2) For solicitations to be awarded to the highest scored bidder
30 based on evaluation factors in addition to price, the preference to
31 a bidder that certifies that all of the parts of the clean energy device,
32 technology, or system to be installed have been manufactured or
33 assembled in this state shall be 5 percent of the total score of the
34 highest scored bidder.

35 (3) A preference awarded pursuant to paragraph (1) or (2) shall
36 not be awarded to a noncompliant bidder and shall not be used to
37 satisfy any applicable minimum requirements.

38 (4) In order to be eligible for the 5-percent preference authorized
39 pursuant to this section, a bidder shall submit all required
40 substantiating documentation and information needed by the state

1 agency to determine if the bidder is eligible for the preference,
2 including, but not limited to, documentation regarding the identity
3 of the manufacturer or assembler of the clean energy device,
4 technology, or system and the location or locations where the parts
5 of the clean energy device, technology, or system will be
6 manufactured or assembled.

7 (5) If, after application of the preferences set forth in this section,
8 more than one bid qualified as the lowest responsible bid or the
9 highest scored bid, the state agency shall award the contract to the
10 bidder that has the highest number of full-time employees who
11 assemble or manufacture the parts of the clean energy device,
12 technology, or system in the state when the contract is let.

13 (b) The Department of General Services shall establish a process
14 to verify that a bidder meets the criteria for the 5-percent
15 preference.

16 SEC. 5. Section 10780.6 is added to the Public Contract Code,
17 to read:

18 ~~10780.6.—(a) For the purposes of this section:~~

19 ~~(1) (A) “Clean energy device, technology, or system” means~~
20 ~~the following:~~

21 ~~(i) A device, technology, or system that contributes to improved~~
22 ~~energy management or efficiency.~~

23 ~~(ii) Ultralow-emission equipment for energy generation based~~
24 ~~on thermal energy systems, including, but not limited to, natural~~
25 ~~gas turbines and fuel cells.~~

26 ~~(iii) A device, technology, or system that conserves or produces~~
27 ~~heat, processes heat, space heating, water heating, steam, space~~
28 ~~cooling, refrigeration, mechanical energy, electricity, or in any~~
29 ~~form convertible to these uses, that does not expend or use~~
30 ~~conventional energy fuels, and that uses any of the following~~
31 ~~electrical generation technologies:~~

32 ~~(I) Biomass.~~

33 ~~(II) Solar thermal.~~

34 ~~(III) Photovoltaic.~~

35 ~~(IV) Wind.~~

36 ~~(V) Geothermal.~~

37 ~~(B) For the purposes of this subdivision, “conventional energy~~
38 ~~fuel” means any fuel derived from petroleum deposits, including,~~
39 ~~but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas,~~
40 ~~including liquefied natural gas or nuclear fissionable materials.~~

(2) ~~“Power purchase agreement” means a financial arrangement in which a third-party developer owns, operates, and maintains a clean energy device, technology, or system, and the trustees agree to site the device, technology, or system on their roof or elsewhere on their property and purchases the device, technology, or system’s electric output, not the device, technology, or system itself, from the third-party developer for a predetermined period of time.~~

10780.6. (a) *For purposes of this section, “clean energy device, technology, or system” means devices or technologies used for a renewable electrical generation facility, as defined in paragraph (1) of subdivision (a) of Section 25741 of the Public Resources Code; a combined heat and power system, as defined in Section 2840.2 of the Public Utilities Code; distributed generation and energy storage technologies eligible under the self-generation incentive program pursuant to Section 379.6 of the Public Utilities Code, as determined by the Public Utilities Commission; or a facility designed for the production of renewable fuels, the efficient use of which reduces the use of fossil or nuclear fuels; and energy efficiency devices or technologies that reduce the need for new electric generation and reduce emissions of toxic and criteria pollutants and greenhouse gases.*

(b) The trustees that accept bids or proposals for a contract for the purchase or installation of a clean energy device, technology, or system through a power purchase agreement or a direct purchase shall provide a preference of 5 percent to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured or assembled in this state. The preference shall be provided as follows:

(1) For solicitations to be awarded to the lowest responsible bidder meeting specifications, the preference to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured or assembled in this state shall be 5 percent of the bid price of the lowest responsible bidder meeting specifications.

(2) For solicitations to be awarded to the highest scored bidder based on evaluation factors in addition to price, the preference to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured or assembled in this state shall be 5 percent of the total score of the highest scored bidder.

1 (3) A preference awarded pursuant to paragraph (1) or (2) shall
2 not be awarded to a noncompliant bidder and shall not be used to
3 satisfy any applicable minimum requirements.

4 (4) In order to be eligible for the 5-percent preference authorized
5 pursuant to this section, a bidder shall submit all required
6 substantiating documentation and information needed by the
7 trustees to determine if the bidder is eligible for the preference,
8 including, but not limited to, documentation regarding the identity
9 of the manufacturer or assembler of the clean energy device,
10 technology, or system and the location or locations where the parts
11 of the clean energy device, technology, or system will be
12 manufactured or assembled.

13 (5) If, after application of the preferences set forth in this section,
14 more than one bid qualifies as the lowest responsible bid or the
15 highest scored bid, the trustees shall award the contract to the
16 bidder that has the highest number of full-time employees who
17 assemble or manufacture the parts of the clean energy device,
18 technology, or system in the state when the contract is let.

19 (c) The Department of General Services shall establish a process
20 to verify that a bidder meets the criteria for the 5-percent
21 preference.